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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,411	09/08/2003	Dieter Mauer	0275M-000768	9939

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HARNESSE, DICKEY & PIERCE, P.L.C.
P.O. BOX 828
BLOOMFIELD HILLS, MI 48303

EXAMINER

BRYANT, DAVID P

ART UNIT	PAPER NUMBER
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3726

DATE MAILED: 03/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/657,411

Applicant(s)

MAUER ET AL.

Examiner

David P. Bryant

Art Unit

3726

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9-16,21-40 and 51-76 is/are pending in the application.
- 4a) Of the above claim(s) 1 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 2-7,9-16,21-40 and 51-76 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

Election/Restrictions

Applicant's election with traverse of Group II (claims 21-40) in the reply filed on December 29, 2004, is acknowledged. The traversal is on the grounds that (1) searching and examining all of the alleged groups will not pose an undue burden on the Examiner, and (2) the Examiner has not set forth a *prima facie* case for restriction.

This is not found persuasive because of the following:

- (1) One way to show undue burden on the Examiner is a showing of different classification of subject matter (MPEP §808.02). The different classifications were clearly set forth in the requirement for restriction, and the search required for each of the Groups is not the same search required for the others.
- (2) A *prima facie* case for restriction was clearly made in the last Office action.

Distinctness between the inventions was outlined with valid examples, and different classification of subject matter was shown.

The requirement is still deemed proper and is therefore made FINAL.

This application, as now amended, contains claims directed to the following patentably distinct species of the claimed invention:

Species A: The embodiment depicted in Figures 1-4.

Species B: The embodiment depicted in Figures 5-6.

Species C: The embodiment depicted in Figure 7.

Species D: The embodiment depicted in Figures 8-10.

Species E: The embodiment depicted in Figure 11.

Species F: The embodiment depicted in Figure 12.

Art Unit: 3726

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, a number of claims appear to be generic.

Applicant is advised that a reply to this requirement must include **an identification of the species that is elected** consonant with this requirement, and **a listing of all claims readable thereon, including any claims subsequently added**. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the

Art Unit: 3726

currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David P. Bryant whose telephone number is (571) 272-4526. The examiner can normally be reached on Monday-Thursday (6:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on (571) 272-4690. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David P. Bryant
Primary Examiner
Art Unit 3726